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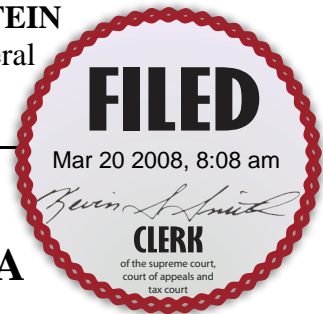
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**IN THE
COURT OF APPEALS OF INDIANA**



WILLIAM WHITE,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0707-CR-603

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Sheila A. Carlisle, Judge
The Honorable William Robinette, Commissioner
Cause No. 49G03-0501-FC-47

March 20, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

After William White pled guilty to criminal recklessness, battery, and carrying a handgun without a license pursuant to a plea agreement which capped his sentence at five years, the trial court sentenced him to five years for the carrying a handgun without a license conviction and to concurrent one-year sentences for the other counts. White appeals, arguing that the trial court abused its discretion by sentencing him in excess of his plea agreement. Finding that the trial court sentenced White in accordance with the terms of the plea agreement, we affirm.

Facts and Procedural History

Early in the morning of January 1, 2005, White and Candace Baker¹ were outside in an Indianapolis neighborhood. Two deputies from the Marion County Sheriff's Department observed White and Baker fire shots from handguns toward North Post Road, where there was heavy traffic. The deputies identified themselves, and White and Baker fled toward a nearby residence with the deputies in pursuit. As one deputy caught up with White, White attempted to dispose of a handgun into the home. White then struck the deputy on his head, causing lacerations, bruising, and pain. White and Baker were then arrested. A subsequent check revealed that White did not have a license to carry a handgun.

The State charged White with criminal recklessness as a Class D felony,² battery as a Class D felony,³ carrying a handgun without a license as a Class C felony,⁴ two

¹ Baker's first name is also spelled "Candice" in the record. We use the spelling employed in White's brief.

² Ind. Code § 35-42-2-2.

counts of resisting law enforcement as a Class A misdemeanor,⁵ and public intoxication, a Class B misdemeanor.⁶ In August 2005, White and the State filed a plea agreement with the trial court. However, White subsequently absconded and did not appear for any more hearings related to this case until April 2007. In June 2007, White and the State again entered into a plea agreement by which White would plead guilty to criminal recklessness, battery, and carrying a handgun without a license in exchange for the State dropping the resisting law enforcement charges. Appellant's App. p. 82. In addition, the agreement provided, "All sentences imposed to be served concurrently. The total sentence shall not exceed five (5) years." *Id.* at 83 (capitalization omitted). The trial court accepted this plea agreement and entered judgment accordingly. After a sentencing hearing during which the trial court heard arguments from both sides, the court sentenced White to five years for carrying a handgun without a license and one year each for criminal recklessness and battery, all to be served concurrently. Tr. p. 24-25. He now appeals.

Discussion and Decision

On appeal, White raises one issue: whether the trial court abused its discretion by sentencing him in excess of his plea agreement. Sentencing decisions are within the discretion of the trial court and are reviewed on appeal for an abuse of discretion. *Rogers*

³ Ind. Code § 35-42-2-1.

⁴ Ind. Code § 35-47-2-1. This charge was elevated to a Class C felony because White had a previous felony conviction within the preceding fifteen years. Ind. Code § 35-47-2-23(c)(2)(B).

⁵ Ind. Code § 35-44-3-3.

⁶ Ind. Code § 7.1-5-1-3.

v. State, 878 N.E.2d 269, 272 (Ind. Ct. App. 2007), *trans. denied*. An abuse of discretion occurs if the court's decision is clearly against the logic and effect of the facts and circumstances. *Id.* (quotation omitted). White correctly contends that a plea agreement is "contractual in nature, binding the defendant, the State, and the trial court." *Bennett v. State*, 802 N.E.2d 919, 921 (Ind. 2004). "It is within the trial court's discretion to accept or reject a plea agreement and the sentencing provisions therein; however, if the court accepts such an agreement, it is strictly bound by its sentencing provision and is precluded from imposing any sentence other than required by the plea agreement." *Id.* at 921-22.

White argues on appeal that the trial court abused its discretion by sentencing him in excess of the sentence permitted by the plea agreement. Specifically, he contends that the court sentenced him to seven years rather than the five years allowed under the agreement. Appellant's Br. p. 7 ("[I]t appears that the judge erred when he placed Mr. Wright [sic] in jail for a total of seven years with two of the charges being served concurrently."). It is clear, however, that the trial court did no such thing. Instead, at the conclusion of White's sentencing hearing, the trial court issued the following sentencing statement:

Anyway, having accepted the Plea Agreement, I'm going to accept the terms of the Plea Agreement. There will be a five – I'm going to do the following: I'm going to sentence him on Count III, first, which is Carrying a Handgun Without a License, a class C felony. And there will be a five year sentence, executed in DOC on that. . . . There will be no probation because that's the maximum sentence pursuant to the Plea Agreement. . . . On Count I, which is a class D felony, there will be a one year sentence but it will be concurrent with Count III. . . . Count II, is a class D felony, one year executed sentence but it will be concurrent with Count III and Count I.

Tr. p. 24-25. Thus, it is apparent that the trial court, with the plea agreement in mind, sentenced White to an aggregate term of five years. *See also* Appellant's App. p. 26 (Abstract of Judgment reflecting that White's aggregate sentence is five years). The plea agreement provides in relevant part, "All sentences imposed to be served concurrently. The total sentence shall not exceed five (5) years." *Id.* at 83 (capitalization omitted). Because the trial court did, in fact, impose all three sentences concurrently, and White received a total sentence of five years, we find that the trial court adhered to the plea agreement and did not sentence White contrary to its terms. The trial court did not abuse its discretion in this regard.

White additionally seems to argue that the trial court did not extend mitigating weight to his guilty plea and that he should have received "probation or parole" instead of incarceration. Appellant's Br. p. 8. However, he raises this issue for the first time in the last paragraph of his appellate brief. This paragraph consists of three sentences and contains no discussion or citations to authority. As such, this issue is waived for failure to present a cogent argument. Ind. Appellate Rule 46(A)(8)(a).

Waiver notwithstanding, to the extent that White argues that we should revise his sentence based upon the trial court's alleged non-recognition of his guilty plea as a mitigating circumstance, we disagree. Our Supreme Court has held that "a defendant who pleads guilty deserves 'some' mitigating weight to be given to the plea in return." *Anglemyer v. State*, 875 N.E.2d 218, 220 (Ind. 2007) (citing *McElroy v. State*, 865 N.E.2d 584, 591 (Ind. 2007)). The caveat, however, is that "an allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the

mitigating evidence is not only supported by the record but also that the mitigating evidence is significant.” *Id.* at 220-21. “[T]he significance of a guilty plea as a mitigating factor varies from case to case,” and “a guilty plea may not be significantly mitigating when it does not demonstrate the defendant’s acceptance of responsibility or when the defendant receives a substantial benefit in return for the plea.” *Id.* at 221 (citations omitted). Here, the record reveals that White received a substantial benefit from his guilty plea in that, in exchange for his guilty plea, the State dropped the three misdemeanor charges related to this incident and multiple undisclosed criminal charges under two other cause numbers. Appellant’s App. p. 82. For the charges to which he pled guilty, the trial court noted that White would have faced a maximum sentence of fourteen years if not for the plea agreement, which capped his sentence at five years. Tr. p. 13. Additionally, we observe that White apparently disappeared for a period of almost two years before reappearing to plead guilty. *Id.* at 24; Appellant’s App. p. 77, 79. This does not reflect well upon his acceptance of responsibility. We do not find that White’s guilty plea is a substantial mitigating circumstance such that remand or revision is warranted.

Affirmed.

SHARPNACK, J., and BARNES, J., concur.